

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***SECOND APPEAL NO. 594 OF 2015
WITH
CIVIL APPLICATION NO. 1327 OF 2015
AND
CIVIL APPLICATION NO. 433 OF 2016***

Shri Ramdayal Banarsidas Agarwal @ Gupta
Residing at 171/30, Chinchwadgaon,
Pune – 411 033.

... Ramdayal/
Applicant.

v/s

1. Shri Ramsharan Banarsidar Agarwal @ Gupta,
Residing at 312/27, Pradhikaran,
Nigdi, Pune – 411 044.

2. Mrs. Beena Ramdayal Agarwal @ Gupta,
Residing at Deepbhavan Bldg.,
E.B.P. Road, Dehuroad, Pune-412 101.

3. Mrs. Meenadevi @ Bhimadevi Ramgopal
Agarwal @ Gupta,
Residing at 17/130, Chinchgaon, Pune.

... Respondents
(Ori. Plaintiff, Def.
No.2 & Plaintiff No.
2, respectively.)

***ALONG WITH
SECOND APPEAL NO. 595 OF 2015
WITH
CIVIL APPLICATION NO. 1328 OF 2015***

Shri Ramdayal Banarsidas Agarwal @ Gupta

Residing at 171/30, Chinchwadgaon,
Pune – 411 033.

... Ramdayal/Applicant

v/s

1. Shri Ramsharan Banarsidar Agarwal @ Gupta,
Residing at 312/27, Pradhikaran,
Nigdi, Pune – 411 044.

2. Mrs. Beena Ramdayal Agarwal @ Gupta,
Residing at Deepbhavan Bldg.,
E.B.P. Road, Dehuroad, Pune-412 101.

... Respondents
(Ori. Plaintiff & Def.
No.2, respectively)

AND
SECOND APPEAL NO. 596 OF 2015
WITH
CIVIL APPLICATION NO. 1329 OF 2015

Shri Ramdayal Banarsidas Agarwal @ Gupta
Residing at 171/30, Chinchwadgaon,
Pune – 411 033.

... Ramdayal/Applicant

v/s

1. Shri Ramsharan Banarsidar Agarwal @ Gupta,
Residing at 312/27, Pradhikaran,
Nigdi, Pune – 411 044.

2. Mrs. Beena Ramdayal Agarwal @ Gupta,
Residing at Deepbhavan Bldg.,
E.B.P. Road, Dehuroad, Pune-412 101.

3. Mrs. Meenadevi @ Bhimadevi Ramgopal
Agarwal @ Gupta,
Residing at 17/130, Chinchgaon, Pune.

... Respondents
(Ori. Plaintiff, Def. Nos.2
& 3, respectively)

Mr.G.S. Godbole, senior advocate i/by Mr.Drupad S. Patil and Ms. Shruti Tulpule for the Ramdayals/applicants in all matters.

Mr.Prasad Dhakephalkar, senior advocate along with Mr.PS. Dani, senior advocate i/by Rahul Kashid for the respondent Nos.1 and 3 in all matters.

CORAM: N.M. JAMDAR, J.

DATED : 10 MARCH 2016

ORAL ORDER:

These three Second Appeals arise from common questions of facts and law and, therefore, they have been argued together and are being disposed of by this common order.

2 The Appellant-Ramdayal in all these appeals is brother of Respondent No.1-Ramsharan. Respondent No.2-Beena in these appeals is the wife of the Ramdayal. Respondent No.3-Meenadevi is the wife of the third brother - Ramgopal.

3 Respondent No.1-Ramsharan is the Plaintiff who had instituted four suits, three of which have given rise to these appeals. Second Appeal No.594 of 2015 arise from Regular Civil Suit No.54 of 2005, Second Appeal No.595 of 2015 arise from Regular Civil Suit No.56 of 2005 and Second Appeal No.596 of 2015 arise from Regular Civil Suit No.57 of 2005.

4 Ramsharan filed four suits for declaration and perpetual

injunction in respect of the properties situated at Village Kiwale, Taluka Haveli, Dist. Pune. According to Ramsharan, the property was purchased by him and Respondent No.3, in the year 1984, by a registered sale deed. It was alleged by Ramsharan that the Ramdayal executed a General Power of Attorney on 20 January 1994 and executed an Agreement of Sale in favour of Respondent No.2 – Beena, his wife. Beena thereafter filed a Special Civil Suit No.678 of 2003 for specific performance of contract and perpetual injunction making the other brothers and Ramdayal as defendants. During the pendency of this suit, the Ramdayal executed a sale deed in favour of his wife, Beena. In view of this, Ramsharan filed four suits for a declaration that the Agreements of Sale and Sale Deeds are bogus, null and void and be set aside. The suit was contested by Ramdayal and Beena. It was their contention that, there was a partition in the year 1985 pursuant to which family arrangement took place in the year 1994 allotting the properties to the shares of the Ramdayal pursuant to which, the Power of Attorney, and thereafter the Sale Deed, were executed.

5 The suits were tried by the Civil Judge, Jr. Divn., Pune. The learned Civil Judge framed issues as regard the validity of the Power of Attorney, Agreement of Sale and Sale Deed, and whether the Ramdayal prove that the properties as to which share, by way of partition, effected with joint family and whether Ramsharan proved that Ramdayal had no right in the said property. The learned Civil Judge came to the conclusion that the Power of

Attorney and the Sale Deed were not legal and valid and decreed the suit on 23 December 2011.

6 In Suit Nos. 56 and 57 of 2005, a declaration was given that Respondent No.1 has one fourth share in the property. In Suit Nos.54 of 2005, only the declaration regarding invalidity of the documents was given.

7 Thereafter, Ramdayal filed three Appeals bearing Nos.96 of 2012, 97 of 2012 and 98 of 2012, in the District Court, Pune. There was no appeal filed from the judgment and decree passed in Regular Civil Suit No.55 of 2005, when the learned District Judge took up three appeals for consideration. As regard the challenge to the judgment and decree in Regular Civil Suit No.55 of 2005, learned counsel for the Ramdayal states that, an appeal has now been filed in the District Court. The District Judge considered the evidence on record and confirmed the findings rendered by the learned Civil Judge. Being aggrieved, Ramdayal has approached this Court in Second Appeal by way of three appeals.

8 Mr.Godbole, learned counsel for the Appellant submitted that the Courts have not considered that the settlement of the year 1994 was proved, which clearly indicated that the properties at Village Kiwale, Taluka – Haveli, Dist. Pune, were to the share of the Ramdayal. He submitted that there were various admissions in the evidence of the witnesses examined by Respondent Nos.1 and 3 to

show that when these properties were alleged to be purchased by these brothers in the year 1984, there was any fund available to these brothers to purchase the properties and their clear admissions on record that they were purchased out of the joint family funds. It was also the admission of this witness that they had no source of income and these admissions have not been considered by the Court. It was also contended that the properties situated at Thergaon, which had fallen to the share of Ramsharan, was developed exclusively by his son indicating that partition has given effect. It was also contended that the family arrangement did not require any registration and that being proved in evidence, it ought to have been given effect. It was also contended that the finding of the District Court that there were no pleadings or written statement by Ramdayal, is incorrect, as Ramdayal had adopted the written statement filed by Beena and had also stepped in witness box. Mr.Godbole also contended that in Regular Civil Suit No.223 of 2001 filed by one of the family members, there was a clear admission regarding partition of the year 1985. It was contended that this being the position, the Sale Deed and the Power of Attorney could not have been cancelled as the properties have been rightly fallen to the share of the Ramdayal. It was also contended that even assuming these documents are to be set aside, they could not have been set aside in entirety and only to the share of the Respondent No.1 as the Respondent No.3 had not filed any suit.

9 The question of law as urged, is regarding the existence of joint family properties and availability of nucleus to purchase the

properties and the factum of partition. This question will have to be considered in the light of the issues framed by the learned Civil Judge. The suits were filed for a declaration that the Power of Attorney and the Agreement of Sale and Sale Deed are null and void. It was the defence of Ramdayal that the suit properties came to be shared by virtue of a partition effected in the joint family. This being the position, the burden was on Ramdayal to establish the factum of partition of the year 1985. Firstly, this is a question of fact and there is a concurrent finding to that effect rendered by both the Courts. If the pleadings are to be considered, the factum of partition of the year 1985, is cursorily mentioned in the written statement, filed not by Ramdayal but by Beena. This written statement has been adopted by Ramdayal. In the written statement, all that Ramdayal states that the property was purchased by Ramsharan and other brothers for their joint family and in 1985, joint family came to be separated. Both the Courts have examined this assertion of Ramdayal and found that there were no further particulars pleaded at all by Ramdayal as regarding the partition of the year 1985. Same is the position in the oral evidence given by Ramdayal. Nothing is deposed as to when the event of partition took place, what happened to the properties and which property went to whose share.

10 Mr.Godbole tried to submit that the document, such as, the written statement in Civil Suit No.223 of 2001 has not been considered by the Courts. This document has been separately considered by both the Courts. Ramdayal has sought to defend this

action of executing a sale deed in favour of his wife by asserting that there was a partition in the year 1985 that the properties were purchased by joint family funds, then there was a family settlement in the year 1994 followed by Power of Attorney. If the evidence on record is seen, there are contradictory stands taken by Ramdayal at various stages. Some of the documents which Ramdayal seeks to rely, do not mention the settlement of the year 1994, such as, written statement in Regular Civil Suit No.223 of 2001. It is also not explained as if the partition took place in the year 1985, then why a settlement which mentions that further partition would take place, would come into existence. The Power of Attorney, which is the foundation for execution of the sale deed, has not been brought on record, neither any notice as required under law is given by Ramdayal. With regard to the admissions of the witnesses regarding availability of funds which Mr.Godbole sought to rely, they are not unequivocal admissions. The witness had only expressed his inability to produce documentary evidence regarding separate income, but had indicated that they were conducting a shop on partnership basis from which the income was stated to have been generated. Therefore, these admissions also will not further the case of Ramdayal as regard the partition is concerned.

11 Furthermore, as regard the properties at Thergaon, the contention that Ramsharan's son has exclusively developed the properties, Ramdayal has filed a suit bearing Suit No.671 of 2003 challenging the said development. In respect of this suit, the trial Court has observed as under :

'27. From the above evidence it appears to me that, defendant is trying to establish that, there is joint family of plaintiff and defendant. And from the income of joint family suit property was purchased for joint family. Plaintiff has filed copy of Exh.01 of Spl. Civil Suit No.671/2003 at Exh.85. This suit is filed by the defendant against his father, brother and son of plaintiff for cancellation of development agreement of the property at Thergaon which is executed in favour of son of plaintiff No.1. In this suit, defendant No.1 has nowhere stated that, there is family arrangement between family and the properties of the joint family are partitioned between the family member in the year 1985. If defendant himself claimed, there is partition in the property of joint family and the suit property came to his share, then why he has filed Spl. Civil Suit No.671 of 2003 for cancellation of development agreement of joint family property at Thergaon. Defendant, in his cross, he admitted that he is not knowing whether his father has executed any power of attorney or settlement deed in favour of his brother. Then question arose why the joint family has executed deed of understanding in favour of defendant No.1 only. Why the other property of the joint family is not mentioned in the understanding deed at Exh.88.'

Therefore, the learned Civil Judge has taken note of the conduct of Ramdayal. In the suit, Ramdayal has not stated anything about the family arrangement and the partition of the year 1985. Both the Courts below have rightly taken into account that if there was any partition and the properties had rightly come to the share of Ramsharan, then why said suit without mentioning the partition, was filed.

12 If these factors are considered, it cannot be said that both the

Courts have rendered any perverse finding or that they had the conclusion or that they had misconstrued the documents to come to a factual finding that Ramdayal had failed to prove that the properties in question had come to his share in the family partition.

13 Furthermore, the reason why the present suit had to be filed, needs to be noticed. Beena, on the basis of the agreement executed by Ramdayal, based on Power of Attorney, had filed Suit No.678 of 2003 for specific performance of the agreement. In this suit, Ramsharan and others had denied execution of any Power of Attorney and had contested the suit. While the suit was pending, Ramdayal went ahead and executed sale deeds in favour of Beena, his wife. Therefore, suits were filed challenging the sale deeds and other documents.

14 As regard the contention that the relief only to Ramsharan is concerned, it is pointed out by Mr.Dhakephalkar, learned senior advocate for Respondent Nos.1 and 3 that, out of four suits, the learned Civil Judge has given direction only in respect of two suits which take care of the factum of equitable distribution.

15 In the circumstances, no substantial question of law arises in these appeals. The only questions of fact which are sought to be raised are answered concurrently by both the Courts.

16 All the three second appeals are dismissed.

17 No arguments were advanced in respect of the Civil Applications. The civil applications are disposed of in view of disposal of the second appeals.

(N. M. JAMDAR, J.)